IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 811 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVINDSINH ALIAS CHIKO RANJITSINH CHAVDA
Versus
STATE OF GUJARAT

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Appearance :
MS SADHANA SAGAR for Appellant ,
Mr Pradip D Bhate, APP for the State

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/12/2007

ORAL JUDGMENT:

This appeal is directed against the judgment and order dated 6th June 2003 passed by the learned Additional Sessions Judge, Ahmedabad in Sessions Case No.19 of 2003.

As per the prosecution, the appellant, on 23rd July 2001, had kidnapped one minor girl – Priyanka, aged about 9 years, when she was returning to home from school. The appellant had taken away her on bicycle by misguiding her and telling her that he has to pay some money to her father and she therefore needed to show him her house. The appellant had taken the girl on his bicycle and cycled around the City of Ahmedabad till it was dark. Once it was dark, he took her in an isolated spot and removed her golden earrings worn by her and left her there and disappeared.

The appellant was the original accused facing charge under Sections 363 and 392 of the Indian Penal Code. By the impugned order, he was convicted for the said offences and sentenced to undergo RI for five years and six years respectively. He was also ordered to pay fine.

PW No.1, Bharatbhai Prahladbhai Patel is father of girl Priyanka. He stated that on the date of the incident Priyanka had gone to school at about 12.00 O' clock and at about 3 O' clock in the evening she had come home during recess and since it was Monday of Shravan month, she had come for her special snack and after having food she went back to school. In the month of Shravan the school got over at 4 O' clock. In the evening Priyanka's bag came home, but she did not return. The bag had come with one boy called Montu. Upon being asked regarding whereabouts of Priyanka, he stated that one person had taken her away on his bicycle. The witness, therefore, went to the school and enquired with the relatives also. When he did not find her he lodged the complaint before police station at Naroda at about 10 O' clock in the night. On the same day one Girishbhai and his wife came to his house to drop Priyanka on their scooter. Upon enquiry, Girishbhai told the witness that Priyanka was found lost in Naroda and she was very scared. She had told him about the cyclist having taken her away. With the

help of the address given by her, Girishbhai had come to the house of the witness to drop her back. Priyanka also narrated the incident to her father. Though the witness identified the accused in the Court, in his cross-examination he admitted that he had seen the accused for the first time in the Court. He, however, explained that he could identify the accused from the description given by Priyanka.

Priyanka, PW No.4, was examined at Exhibit 9. She stated that on the date of the incident her school got over at 4 O' clock. When she was coming out of the school, at the gate one person was waiting with bicycle. He had worn a black pant. He was virtually bald and he was thin. He had told her that installment is to be paid to her father and that therefore she should show the house. She handed over the bag to Montu and sat with the said person on the bicycle. He cycled around with her, took her in a lane and taken her earrings off. She was afraid and therefore she could not shout. He left her there and went away. Thereafter, one gentleman had asked her as to why she is standing there. He was with his wife. She gave him her address and the gentleman had dropped her back to her house. Priyanka identified the accused before the Court. She had also identified the accused in the Test Identification Parade carried out by the police.

Test Identification was proved through panch witnesses. This accused was also identified by Montu in the Test Identification Parade. However, Montu was not examined before the Court.

Muddamal earrings were recovered at the instance of the accused. Panchnama of the recovery was also drawn. Panch witness, Prahladbhai Ambarambhai Patel, PW No.6, was examined at Exhibit 12. Prosecution also examined one Kapurchand Devchandji Soni, PW No.2 at Exhibit 6. He had stated that the accused had come to his shop to sell the earrings, which he had purchased for Rs.500. Accused had told him that his wife

is unwell and, therefore, he needs money. He had identified the muddamal articles before the Court.

Prosecution also examined Girishbhai at Exhibit 17. He was the gentleman who had dropped Priyanka at her house on his scooter. He stated that he has a press in Munshi compound. On the date of the incident at about 10 O' clock he had gone to his press for supervision of the printing work. When he came back his wife was talking to a young girl in school uniform. He enquired with his wife and was told the girl was dropped off by a cyclist who had taken away her earrings. He collected the address of the girl and dropped her home.

From the above evidence it can clearly be seen that the prosecution had beyond any doubt established the involvement of the appellant – original accused. Girl – Priyanka who was barely aged about 9 years on the date of the incident had very clearly stated the chain of events in her deposition before the Court. At about 4 O' clock in the evening when her school was got over she came out of the school and she had met with the appellant. Giving a false excuse, he took her away on his bicycle and cycled her around till it was dark. He took her in an isolated spot and removed her earrings. He had left her there and thereafter went away. The version of Priyanka was fully supported by several other witnesses and corroborating pieces of evidence. Priyanka's father, Bharatbhai, PW No.1, had lodged the complaint before the police. Ordinarily, she would have returned to her home after her school got over after 4 PM. On the date of the incident another boy, Montu, dropped her bag, but Priyanka has not returned. The complaint was lodged, but Priyanka's whereabouts were not known. At about 10 O' clock in the night Girishbhai along with his wife had dropped Priyanka on his scooter. Girishbhai corroborated the version of PW No.1. He stated that at about 10 O' clock in the night when he came home from

the press after completing his work he found his wife talking to a young girl in school uniform. She was very scared. He collected her address and dropped her at her parents' house.

Kapurchand Soni, PW No.2, also stated that the appellant had sol earrings to him, which were identified before the Court. These earrirngs were recovered at the instance of the appellant and panchas supported the recovery.

From the evidence on record, the prosecution clearly established that the appellant had on the date of the incident, by giving a false story to a young girl aged 9 years, kidnapped her and also took away gold earrings. His conviction, therefore, under Sections 366 and 392 of the Indian Penal Code was perfectly justified. Sentence imposed also cannot be stated to be excessive. Considering the nature of the incident and considering the act committed by the appellant on a young girl aged barely 9 years, no case for reduction of the sentence is also made out.

At this stage, learned counsel for the appellant submitted that the direction for fine may, at least, be reduced. She submitted that the appellant is extremely poor person and has not been able to pay the fine. In default of payment of fine of Rs.2,000 and Rs.3,000 he has to undergo Simple Imprisonment of months and six months respectively.

Considering the submissions made, the appellant is directed to pay fine of Rs.500/- each to both the offences and in default of payment of fine he shall suffer Simple Imprisonment of one month each.

Appeal is disposed of accordingly.

(Akil Kureshi, J.)

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